UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/928,272	09/12/1997	MICHAEL J. ISKRA	P-3818	9434
7590 05/07/2007 RICHARD J RODRICK			EXAMINER	
BECTON DICKINSON AND COMPANY			MITCHELL, TEENA KAY	
1 BECTON DRIVE FRANKLIN LAKES, NJ 074171880		ART UNIT	PAPER NUMBER	
	,		3771	
		•		r
	•	•	MAIL DATE	DELIVERY MODE
			05/07/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

		Application No.	Applicant(s)	-			
		08/928,272	ISKRA, MICHAEL J.				
	Office Action Summary	Examiner	Art Unit				
		Teena Mitchell	3771				
Period fo	The MAILING DATE of this communication app or Reply	pears on the cover sheet w	ith the correspondence address				
A SH WHIC - Exte after - If NC - Failu Any	IORTENED STATUTORY PERIOD FOR REPLY CHEVER IS LONGER, FROM THE MAILING DOWNS of time may be available under the provisions of 37 CFR 1.13 of SIX (6) MONTHS from the mailing date of this communication. Of period for reply is specified above, the maximum statutory period variety to reply within the set or extended period for reply will, by statute reply received by the Office later than three months after the mailing and patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNI 36(a). In no event, however, may a will apply and will expire SIX (6) MO1 , cause the application to become A	CATION. reply be timely filed NTHS from the mailing date of this communication. BANDONED (35 U.S.C. § 133).				
Status							
1)⊠	Responsive to communication(s) filed on 09 N	ovember 2006.					
2a) <u></u> □	This action is FINAL . 2b)⊠ This	action is non-final.					
3) 🗌 🦇	Since this application is in condition for allowance except for formal matters, prosecution as to the merits is						
	closed in accordance with the practice under E	Ex parte Quayle, 1935 C.E). 11, 453 O.G. 213.				
Disposit	ion of Claims						
5)□ 6)⊠ 7)□	Claim(s) <u>1 and 5-9</u> is/are pending in the applicate 4a) Of the above claim(s) is/are withdraw Claim(s) is/are allowed. Claim(s) <u>1,5-9</u> is/are rejected. Claim(s) is/are objected to. Claim(s) are subject to restriction and/or content of the application of	wn from consideration.					
Applicat	ion Papers						
10)	The specification is objected to by the Examine The drawing(s) filed on is/are: a) acc Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct The oath or declaration is objected to by the Ex	epted or b) objected to drawing(s) be held in abeya tion is required if the drawing	nce. See 37 CFR 1.85(a). i(s) is objected to. See 37 CFR 1.121(d) .			
Priority	under 35 U.S.C. § 119	•					
a)	Acknowledgment is made of a claim for foreign All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority document application from the International Bureau See the attached detailed Office action for a list	s have been received. s have been received in A rity documents have beer u (PCT Rule 17.2(a)).	Application No received in this National Stage				
Attachmer	nt(s) ce of References Cited (PTO-892)	4) ☐ Interview	Summary (PTO-413)				
2) Noti	ce of Draftsperson's Patent Drawing Review (PTO-948) rmation Disclosure Statement(s) (PTO/SB/08)	Paper No	s)/Mail Date Informal Patent Application				

U.S. Patent and Trademark Office , PTOL-326 (Rev. 08-06)

3) Information Disclosure Statement(s) (PTO/SB/08)

Paper No(s)/Mail Date _____.

6) Other: _____.

DETAILED ACTION

Allowable Subject Matter

Applicant is advised that the Notice of Allowance mailed is vacated. If the issue fee has already been paid, applicant may request a refund or request that the fee be credited to a deposit account. However, applicant may wait until the application is either found allowable or held abandoned. If allowed, upon receipt of a new Notice of Allowance, applicant may request that the previously submitted issue fee be applied. If abandoned, applicant may request refund or credit to a specified Deposit Account.

The indicated allowability of claims 1 and 5-9 is withdrawn in view of the newly discovered reference(s) to Arlman 3,918,909. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

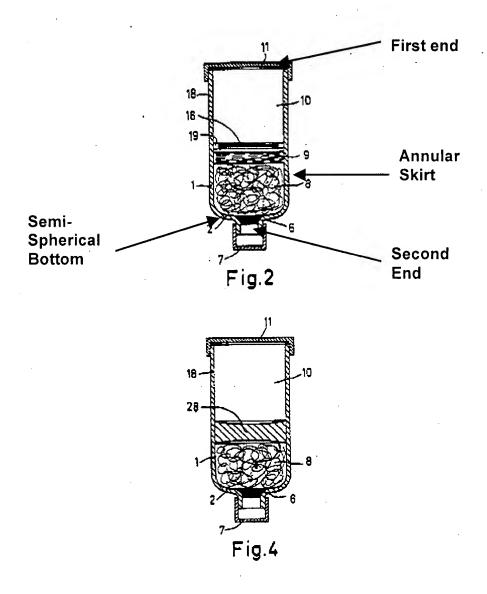
A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Arlman 3,918,909.

Regarding claim 1, Arlman discloses a one-piece collection container assembly (Figs. 1-5) comprising: an elongate tubular housing having opposed first and second ends (Figs 2, 4); and a solid partition positioned within said housing between said first

and second ends (16, 28); said housing defining a volume for specimen collection therein between said first end and said partition; said second end comprising a bottom end below said partition, said bottom end comprising an annular skirt and a semi-spherical bottom, wherein said semi-spherical bottom comprises an opening therein (not illustration of Figs. 2, 4 below).



Application/Control Number: 08/928,272

Art Unit: 3771

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arlman 3,918,909.

With respect to claim 5, Arlman does not disclose the partition being arcuate shape with a partially rounded bottom portion, however applicant in Figs. 1 and 2 (Prior Art) teaches that such arcuate shape and rounded bottom portion is known in the art and therefore it would have been an obvious design consideration for one of ordinary skill in the art to have the partition of Arlman with an arcuate shape and rounded bottom portion, as such is known in the art based upon Figs. 1 and 2 of applicant's instant application.

With respect to claim 6, note rejection of claim 5 above.

With respect to claim 7, Arlman discloses the claimed invention except for the housing being a thermoplastic polymer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the housing of a thermoplastic polymer, since it has been held to be within the general skill of a worker in the art to

select a known material on its suitability for the intended use as a matter of design consideration. In re Leshin, 227 F.2d 197, 125 USPQ 416.

With respect to claim 8, note rejection of claim 7 above.

With respect to claim 9, Arlman fails to disclose the claimed dimensions of the housing as set forth by the claim. However, the Applicant has fails to disclose why those particular dimensions are advantageous or what particular problem those specific dimensions solve. Furthermore, depending on the intended use (e.g., how much of a sample is to be collected, the dimensions of the housing will vary and such dimensions may also be derived through routine observation and experimentation and therefore, it would have been obvious to one of ordinary skill in the art to make the housing of any desired dimensions to fit the needs of the user.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Figures 1 and 2 of the instant application in view of Arlman (3,918,909).

With respect to claim 1, Figures 1 and 2 of the instant application disclose a one piece collection container assembly comprising: an elongate tubular housing having opposed first and second ends; and a solid partition (20) positioned within said housing between said first and second ends (Figs. 1, 2); and said housing defining a volume for specimen collection therein between said first end and said partition (figs. 1, 2); said second end comprising a bottom end below said partition (30), said bottom end comprising an annular skirt (28) and an the bottom comprises an opening therein. The difference between Figures 1 and 2 of the instant application is the semi-spherical shaped bottom. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have a semi-spherical bottom as taught by Arlman in order to round off the bottom end.

With respect to claim 5, Figures 1 and 2 (Prior Art) of the instant application disclose the partition being arcuate in shape and Arlman teaches at least a partially rounded bottom portion (note rejection of claim 1 above).

With respect to claim 6, Figures 1 and 2 of the instant application disclose wherein the partition is conical in shape.

With respect to claim 7, Figures 1 and 2 of the instant application in view of Arlman discloses the claimed invention except for the housing being a thermoplastic polymer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the housing of a thermoplastic polymer, since it has been held to be within the general skill of a worker in the art to select a known material on its

suitability for the intended use as a matter of design consideration. In re Leshin, 227 F.2d 197, 125 USPQ 416.

With respect to claim 8, note rejection of claim 7 above.

With respect to claim 9, Figures 1 and 2 of the instant application in view of Arlman fails to disclose the claimed dimensions of the housing as set forth by the claim. However, the Applicant has fails to disclose why those particular dimensions are advantageous or what particular problem those specific dimensions solve. Furthermore, depending on the intended use (e.g., how much of a sample is to be collected, the dimensions of the housing will vary and such dimensions may also be derived through routine observation and experimentation and therefore, it would have been obvious to one of ordinary skill in the art to make the housing of any desired dimensions to fit the needs of the user.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show collection containers: 5,271,852; 3,931,010; 5,879,635; 4,729,875.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached on Monday-Friday however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jun httlill Teena Mitchell Primary Examiner Art Unit 3771 April 25, 2007

TKM